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UNCLAS SECTION 01 OF 03 SARAJEVO 001383

SENSITIVE
SIPDIS

DEPARTMENT FOR EUR DAS JONES AND EUR/SCE

E.O. 12958: N/A
TAGS: [PREL](#) [PGOV](#) [PINR](#) [KDEM](#) [BK](#)
SUBJECT: BOSNIA: REPUBLIKA SRPSKA STILL BLOCKING BRCKO
RESOLUTION

REF: A. SARAJEVO 1110
[1](#)B. SARAJEVO 1312

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Summary

[1](#)1. (SBU) The Republika Srpska (RS) continues to reject two OHR September 18 decisions on Brcko, thereby undermining OHR's authority. Because of the RS's non-compliance with these decisions, the Brcko Supervisor could not recommend the closure of OHR supervision of Brcko District at the November 18-19 Peace Implementation Council (PIC) session. Discussions have continued, but the end of Brcko supervision is not in sight. End summary.

RS Snubs HighRep, Supervisor Cannot Recommend Closure

[1](#)2. (SBU) On September 18, HighRep Valentin Inzko imposed laws implementing three of the four remaining technical requirements for the termination of Brcko Supervision (ref A). In response, the RS government announced September 22 that RS officials would not accept or implement the HighRep's decisions, and questioned the legality of all decisions by all previous HighReps. The RS government adopted 14 conclusions September 24, which declared that it would not support the HighRep's decisions on Brcko, would not participate in the work of the BiH Electric Transmission Company (Transco/Elektroprenos, ref B), would file lawsuits against all previous HighReps in their home countries, and would initiate a referendum on any future decision by the HighRep.

[1](#)3. (SBU) Additionally, the RS Government ordered the RS Official Gazette not to publish the laws and decisions of the HighRep. On September 30, the RS National Assembly (RSNA) held a special session on this issue. Ultimately, the RSNA refused to publish the HR's September 18 decisions in the RS Official Gazette, as it is required to do under RS law. Principal Deputy HighRep (PDHR) and Brcko Supervisor Raffi Gregorian therefore notified the PIC at its November 18-19 session that he would be unable to certify to the Tribunal that the RS had fulfilled all its legal obligations under the Final Award and therefore unable to recommend the closure of Supervision (ref C).

RS Challenges OHR on Citizenship Law

14. (SBU) One of the remaining conditions for the closure of Supervision is legislation allowing BiH citizens with a domicile in Brcko to choose or change their entity citizenship. The state, both entities, and Brcko each would need to adjust their citizenship laws to fulfill this condition. The state, Federation, and Brcko implemented the draft amendments to their laws that the HighRep imposed, but the RS has refused to do so. Instead, it has proposed its own amendments to its existing law on citizenship. This item is currently on the agenda of the RS National Assembly (RSNA) for a session that will take place in late December 2009 or January 2010. This law contravenes the HighRep's decision on both process and substance. On process, the Bonn Powers allow the HighRep to impose laws and amendments as "interim measures," stipulating that the law or amendment cannot be changed until the legislature in question adopts his decision. Attempting in advance to change the HighRep's amendment to the RS law would directly repudiate the Bonn Powers.

15. (SBU) On substance, the HighRep's law states that if a Brcko resident applies for RS citizenship, and the RS government fails to respond within 30 days, the applicant receives citizenship automatically. The amendments proposed in the RSNA do not include such a provision. More than 30,000 Brcko residents have not declared citizenship of either entity, and others have been waiting to change their citizenship from one entity to the other. Failure to resolve this issue before the 2010 general elections could result in fraud and/or disenfranchisement. It also could affect the results of the elections, as a few thousand non-Serbs could, if they decided to vote in the RS rather the Federation elections, sway the outcome of the race for RS President. PDHR Gregorian has made clear to the RS that the proposed

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amendments to the existing RS law are insufficient to meet the requirement for the closure of Supervision.

PIC Reacts

16. (SBU) On December 11, the Russian Ambassador to BiH told the PIC Steering Board Ambassadors (SBA) that he had spoken recently with Dodik about the citizenship issue. The Russian Ambassador argued that the amendments to the RS citizenship law that the RS proposed were substantively similar to those that the HighRep imposed, thereby giving Dodik the face-saving advantage of acting on his own. Pushing Dodik to accept the imposition, he said, would just be met with a resounding "no," causing an impasse and increasing tension. The Spanish Ambassador raised concerns with this approach, arguing that it would constitute a tacit agreement by the PIC that it was not necessary for the RS to publish HighRep decisions in the Gazette, which would set a negative precedent. Similarly, the British Ambassador cited the legal complications if HighRep decisions were formally adopted in the Federation but not in the RS. Ultimately the SBA elected to delay sending a letter to Dodik encouraging him to implement the HR's decisions, opting instead to engage in further discussions with Dodik. Gregorian agreed to meet with Dodik and RSNA Speaker Radojicic to see if a face-saving way could be found, stipulating that he would not concede to roll back any previous HighRep decisions.

RS Playing Politics with Electricity

17. (SBU) Another of the four conditions for the closure of supervision is an amendment to state and entity laws ensuring security of electricity supply to Brcko District. The RS currently provides all of Brcko's electricity, under a memorandum of understanding due to expire at the end of 2009. On September 18, the High Rep mandated that going forward, each entity provide to Brcko 50 percent of its electricity needs. According to OHR, the Federation-based power

generation and distribution company Elektroprivreda BiH is ready to provide its 50 percent, in accordance with the law. The RS, however, while willing to sell Brcko power, has rejected the HighRep's order, and has chosen to negotiate with Brcko on its own terms. Brcko Mayor Dragan Pajic told us December 7 that the RS Minister of Energy has invited him to sign an agreement by which the RS would provide 50 percent of Brcko's electricity as of January 1, 2010. According to Pajic, Dodik said that as long as a member of Dodik's Alliance of Independent Social Democrats (SNSD) -- to which Pajic belongs -- is mayor, the RS will provide electricity to Brcko. OHR views this separate deal as illegal, because the RS has not adopted the HighRep's September decision.

Fewer Blockages on Succession Funds and Debts

18. (SBU) The other two conditions for closure are the allocation of a portion of succession funds from the former Yugoslavia to Brcko and the resolution of entities' debts to Brcko. Implementation of the succession funds issue will begin in January 2010, per the law that the HighRep imposed on September 18, based upon the version adopted on September 14 by the BiH Council of Ministers. The law stipulates that the funds due to Brcko and the state will be paid through deductions from entity revenues from the Indirect Taxation Authority (ITA) beginning January 1, 2010, until they are paid off (probably in less than two months). On entity debts to Brcko, although no complete solution has been achieved with either entity, talks are underway, and the RS has paid Brcko the first tranche. Part of the onus is now on Brcko to produce documentation supporting its claims.

Comment

19. (SBU) The continued need for international supervision of Brcko is disappointing. The stability of the District and solidification of its relationship with the state and entities is a key U.S. objective in BiH and one of the "5 plus 2" objectives needed for OHR transition. The behavior of RS leaders threatens to undermine progress made on this objective. Furthermore, Dodik and other RS leaders are using

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the outstanding electricity and citizenship issues to challenge OHR and the HighRep's authority. We will continue to encourage Dodik and other RS leaders to implement the HighRep's decisions, but this might not be enough to sway them: the stalemate regarding Brcko may remain in place for some time.

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